

Brownfields Study Group Meeting

August 29, 2002

Meeting Minutes

I. Attendees

Sue Bangert, DNR
Kendra Bonderud, WI Leg. Fiscal Bureau
Loren Brumberg, DNR
Nova Clite, TN&A
Beverly Craig, Milwaukee Ec. Dev. Corp.
Kathy Curtner, DNR
Joe Dufficy, EPA
Darsi Foss, DNR
Nancy Frank, UW-Milwaukee
Judie Gibbon, DOR
Mark Giesfeldt, DNR
Mark Gordon, DNR
Ken Haberman, Landmark Environmental
George Hamper, EPA
Willie Harris, EPA
Maureen Hubeler, DNR
Bruce Keyes, Foley & Lardner
Larry Kirch, City of La Crosse
Dan Kolberg, DNR
Peggy Lescrenier, Dept. of Commerce
Lee Madden, Fiore Companies
Jim Van der Kloot, EPA

Ellen Manges, EPA
Tony Martig, EPA
Percy Mather, DNR
Kate Mawdsley, DOA
Mark McDermid, DNR
John Melby, DNR
Jessica Milz, DNR
Tom Mueller, TEMCO
Peter Peshek, DeWitt Ross & Stevens
Lance Potter, DNR
Michael Prager, DNR
Al Rabin, Dept. of Commerce
Joe Renville, DNR
Andrew Savagian, DNR
Jim Schmidt, DNR
Jason Scott, Dept. of Commerce
Bob Springer, EPA
Joy Stieglitz, Vandewalle & Assoc.
Bruce Sypniewski, EPA
Sam Tobias, City of Fon du Lac

II. Welcome, Introduction, Agenda Repair

III. Follow-up Items From Last Meeting

A. Hazardous waste update (Mark Gordon)

Mark Gordon: Steps have included:

- Completed draft copy of guidance end of June, sent out internally
- Internal comments came back end of July – in process of revisions
- Goal – new version end of this week (August 30th)
- Send out to Study Group, EPA and others for review and comments
- Walk-through with Study Group tentatively scheduled for early to mid-October
- Guidance implemented by end of the year
- John Melby is the contact in the Waste Program (john.melby@dnr.state.wi.us; 608-264-8884)

Tom Mueller: have there been comments about certification statements in the solid waste exemption, we have had some problems but haven't had time to comment

Gordon: as far as I know, there haven't been any

B. Budget Letters to State Agencies (Andrew Savagian)

Andrew Savagian: Received no comments after emailing last draft in mid-July; sent out letters more than two weeks ago; only status update came from DNR

Darsi Foss: met with Secretary Darrell Bazzell, now in DNR's budget request, goes to Natural Resources Board (NRB) next week (1st week in September), then goes to DOA and the Gov's office; then to State Legislature

C. Status on Separate Legislation (Darsi Foss)

Foss: we have a memo on timeline for DNR non-fiscal items (handed out to Study Group); this puts some of the Study Group items on a dual track – one toward the state agency budget, and one for separate legislation; DNR is putting a package forward as the Study Group requested

Peggy Lescrenier: did DNR include repealing the sunset of the vehicle impact fee?

Mark Giesfeldt: our recommendation is to eliminate it, but that proposal has not been approved by the (NRB) yet

Tom Mueller: have we found a legislator to represent [the Study Group] yet?

Foss: not yet, it's hard to say who's going to be there this fall

D. Identifying New Issues (Andrew Savagian)

Savagian: haven't had a lot of responses for signing up for issue tracks/sub-groups

Issue: Financial

Foss: we need to have financial recommendations done by October or November, probably not room for a whole lot of new items, but we'd like to keep what we have going

Joy Stieglitz: I think we should have a separate financial meeting within the next two weeks, and I'd like to be on it

Mueller: John Stibal will want to be involved too

Issue: Sediments

Savagian: again, only a few members have indicated any interest; please let Andrew know if you want work on this issue

Giesfeldt: I will try to help set this up, because it's important

Issue: Regional Implementation

Savagian: again, please let me know if you're interested

Any Other Issues?

Bruce Keyes: do we need an state/EPA issue track for the Study Group; maybe we need to discuss that this afternoon

Beverly Craig: there is a PECFA issue with tax delinquent properties, where would we discuss this?

Giesfeldt: please put down the specifics to this issue; send email suggestions to me and we'll present these to Commerce

Mueller: please include this as part of the finance issue discussions

Keyes: any liability issues? Every now and then these issues pop up, but we're dealing separately with waste issues; if there is another issue track, maybe we could look at any remaining issues, such as the LGU exemption, VPLE, waste issues, etc. – maybe only need to meet once

TASK: Savagian will send out email about these groups and request Study Group members to sign up

IV. Next Steps/Meetings? (Savagian)

Savagian: when should you meet next?

Stieglitz: subcommittees should meet first

Mueller: need report by December, so need two meetings before, probably early November and early December

Foss: main priority will to have subcommittees meet and put reports together

Stieglitz – financial group should be earlier, like in September

V. Agency Updates

A. DNR

8/29/02 Brownfields Videoconference (Jessica Milz)

Milz: EPA and state agencies held videoconference on Aug. 29th, that many of you attended; had approx. 299 participants; well attended and we received many positive comments; plan to hold more of these in the future

Craig: there were lots of local governments in attendance that have grants to give out, and it was difficult for us to talk at the breaks, so need to maybe have break-out rooms for us afterwards

Brownfields Site Assessment Grant, SAG (Milz)

Milz: SAG applications due Nov. 1, will hand out grants in late December/early January; there will be a governor's office announcement; and grants can be awarded no later than 90 days

Mueller: new apps, can you fill them out and submit them on-line?

Milz: no you can't, not yet with these forms, but DNR folks are looking into that technology

Lescrenier: thanks to DNR for doing this

Green Space and Public Facilities Grants (Michael Prager)

Michael Prager: the emergency rule was approved by the NRB and is in affect; the permanent rule is currently at the State Legislature; application and instruction info will be available soon; deadline is January 17 to give people time to prepare their applications since this is a brand new program

Mueller: are you getting any questions on this grant program?

Prager: yes, getting some phone calls, people are interested

Land Recycling Loan, LRLP (Kathy Curtner)

Kathy Curtner: we anticipated three loans closing, now only two and of those two, only sure about Sheboygan; the New Richmond folks dropped out and the West Allis folks are a maybe; if Sheboygan goes through, there will be \$9.8 million left for the next cycles; the application deadlines are October 1 and February 1; ITA is due end of December of this year for 2003 loans

B. Department of Commerce

Brownfields Grants (Jason Scott)

Jason Scott: we will be holding a three-hour videoconference training on the grant scoring system and other grant specifics on Sept. 11 at 6 locations around the state – Madison (Pyle Center), Spooner, La Crosse, Wausau, Green Bay, Milwaukee; application is on the web and the deadline is October 25

Tom: need to get all this information, including the questions from the videoconferences, out on the web

VI. EPA One Cleanup Program

Giesfeldt: gave a brief introduction and welcome to EPA's Bob Springer and Ellen Manges; the Study Group has quite a reputation as an effective stakeholder group, so that's why Ellen and EPA are here today

Ellen Manges: thank you for inviting us to talk about this; there is a another draft of the version you have in front of you that will be going out soon to a variety of stakeholders, interest groups, etc., before we go public with the final version later in the year – I'm here basically to get your input because we're just starting this out and need your help.

This process started last year; Resources For the Future (RFF) came out with a Superfund report authorized by Congress; report said YES we need Superfund funding for next 10 years and will cost approx. \$10 Billion;

However, report also pointed to some problems; EPA Administrators office said EPA should put together an advisory committee; have a subcommittee of that group that focuses on Superfund, especially on listing; had their first meeting in June; Mark Giesfeldt is on that group;

The RFF report also said EPA needs to put together an action plan; Mary Ann Horencko said let's go beyond Superfund and make this action plan about how to improve CLEANUP as a WHOLE agency;

Schedule

Manges: action plan still being developed; releasing to stakeholders tomorrow to get more input; the deadline has already slipped a couple of weeks; meeting with industry, states, environmental justice and community groups, other EPA groups, DOE and other federal agencies; end of October/early November have a public release of the document along with an implementation plan;

This is also an EPA cultural thing; majority of agency programs were formed 20+ years ago, to deal with some very immediate, costly problems; much of it was the old dig and dump mentality; since that time, however, we've learned a lot as well as cleaned a lot of sites, and the problems that remain are much more complicated to deal with, and we need to adjust our programs to deal with those issues;

Our staff and programs need deal with working more closely with each other and with the states.

Comments

Lescrenier: how do we contact people to comment on this initiative?

Ellen: Call me at 202-566-0195 and my email is in the handout – manges.ellen@epa.gov

Peter Peshek: you're helping us achieve something we've wanted here in WI for a long time; but don't let 'em dummy down the outcome; we have to challenge ourselves and we have to challenge the institutions; we don't need all these enabling statutes;

We get a lot of paper from EPA that creates boxes and scares a lot of people -- what are we going to do to get state agency staff to feel like they can do what they need to do to get things done, how do we do that in the interim?

Manges: good points and good questions; a lot of what's in here is common sense and we're doing a lot of this already; now we're taking it and institutionalizing it; some really want that and we believe the states have been very involved, and they're concerned this program will take away that flexibility

Keyes: you may want to address how these changes affect efforts in the long term – in ten years where do you want to be? Why create a document that doesn't look to adjust and change with legislation?

Also, with the Study Group we've been able to have opposition, yet sit down together and work out differences, or at least forward those differences and come to some compromises

Keyes: to what extent do you envision guidance and documents?

Manges: you should see something coming out of this now; trying to do a better job at guidance and producing guidance

Keyes: it helps us to see that this says “guidance” to help externals know what we need to do with these documents

Manges: cross-program teams are part of this plan to make sure these things happen; lots of people in EPA have been talking about this, but no one’s dedicated the resources to make it happen; hopefully as this rolls along Congress will pick up on it and provide more money; communication is a key and big picture/vision and telling people how we’re doing this is critical;

Keyes: in regards to spill reporting requirements, there are many different programs for how to report spills; there’s no uniformity, within and between states and feds; there’s room here for suggestions to make it more uniform

Peshek: there are also hundreds of pages of codes, Wisconsin’s 500-700 Wis. Adm. Code, plus the feds have hundreds of pages of regs as well; when are we going to be able to abolish all of that and streamline it to one code? Why should we be that patient? We shouldn’t be patient anymore, we’ve understood this for many years, why don’t we do this right now?

Manges: that kind of pressure is good and is how we can make some change; we need a lot of your input/cooperation to make these changes happen

Mueller: these are excellent ideas; you really need to keep your mind on the long term; and what we’ve learned with the Study Group is that the ongoing efforts to adjust and change from what’s current is JUST as important as the initial kickoff effort;

So flexibility is key; we know what you can do scientifically, financially, etc., we look at projects and say the LAST dollars we look at are the federal dollars because of all the strings; transactions happen in the real world; we don’t care about the various agencies and who’s doing what, we just want to see progress happen, with the understanding that you have to work with various agencies

Manges: we have that flexibility to keep coming back, and will have annual reports to talk about the progress

Stieglitz: in thinking of a site we’re working on, this is in relation to your comments about cross-program and integrated training; we have had some problems with the EPA’s OSC and project manager; the stumbling block here is two departments in the same agency working at the same site; if the goal is one cleanup/one stop shopping, etc., the most important objective is cross training BETWEEN the departments to make sure they understand each other, to meet the same end goal; I didn’t quite read that in this document, maybe this should be out there more in the document

Manges: this is one of the keys; in section III, under “Management Approaches” about cross-training and having one person as your main contact

Stieglitz: and I understand the need for one person as a main contact, but it sounds like you’ll probably always have more than one person to deal with from different programs in your agency; so you NEED to make sure it’s an integrated part of training and staff to make sure they all know the intricacies of the separate programs

Manges: I agree and maybe we need to bring that out more in the OCP document

Giesfeldt: a big issue with EPA is the performance measures aspect; what are the measureables? We need to hear from you about what are good ways to measure success for OCP; we'll also need to let Ellen and the EPA folks know this is an efficiency issue – we need this to work smoothly and seamlessly

Manges: whole section at the end, under 2D, that talks about performance measures

Review of OCP Document (Manges)

Lescrenier: want to get more information on Part IV on the specifics to help market those ideas locally

Foss: obviously we want nationally coordinated standards and work; however, for example, if WI has natural attenuation guidance and EPA comes out with one, what do you do? This can cloud and confuse folks out there; so IF that happens, how do we deal with that and that standard and which guidance should they use? The OCP document does address the first part but not necessarily the second part of this dilemma

VII. Land Revitalization Agenda (Manges)

Giesfeldt: please comment to us and we will pass those on to Steve Luftig

Manges: there will be a fact sheet coming out on how these two initiatives – OCP and the Land Revitalization Agenda – work together

Foss: so if some states already have tools that accomplish what these documents set out to do, that needs to be recognized that these are OK to use without the fed tools, otherwise we have overlap

Bob Springer: if a state has a cleanup program that's well organized and works, then that's the one that we work with; we have to figure out how to do that in other places in the agency and this document needs to say that up front; that some states are doing fine and don't need fed overlap

Lunch

VIII. Region V One Cleanup Plan Effort (Joe Dufficy and Jim Vander Kloot)

Jim Vander Kloot: gave brief outline and goals of effort; first wave of changes heavily focused on Superfund in 1993 with cities; second stage involved band aid legislation on liability and other provisions; third stage was the latest BF legislation

Foss and Joe Dufficy: went through handout and gave brief summary on what the Study Group has already talked about related to state-federal relationships and brownfields

Dufficy: federal brownfields work has been marked by open willingness for all entities to come to the table together and provide their input; we're trying to use the redevelopment concept to help drive this thing instead of the old "cleanup for the sake of cleanup" thinking;

Comments

Keyes: What if state changes language in MOA? Because Wisconsin doesn't have lingo to deal with changes to NR 700 and Wisc. Regs., so does it affect the MOA? Clients always want to know that

Dufficy: says any site that says "cleaned up" we're not interested in; it's our expectation that a site will reach some stage of finality; we're not approving the cleanup; we trust the states and their input and we don't plan to get involved; we don't have an active discovery program, 99% of what we get are referrals

Keyes: as a practical matter, for DNR and EPA, if the MOA still applies, as a part of assurance I can ask for a letter saying this is still applicable?

Dufficy and Foss: yes

Keyes: on sediment issues, related to state riparian laws; if I buy a property and there's toxic muck from my property, but I've contained all the exposure, I can still have liability for those contaminated sediments?

Dufficy: yes

Foss: this is also an issue for those downstream from a Superfund site where the toxic muck has plumed downstream and then pulled in all those downstream properties

Study Group members then engaged in a discussion occurred about sediment testing and what you can base property contaminated on

Keyes: contaminated sediments are fast becoming more of a problem because it's very hard to determine where/how/when this contamination comes from; what assurances are there for a downstream property owner from a Superfund site that EPA won't come after them?

Dufficy: that's a tough question; you could possibly put together a prospective purchaser agreements for each affected property

Dufficy and Foss: you could take the approach similar to how the state has dealt with groundwater in these situations instead of individual property agreements

Keyes: I agree, I think that's dead on and we need to do something like we did for groundwater

Keyes: what about PCB-contaminated sites – what are the limits to selling that sites?

Tom Martig: we are trying to address that with the EPA brownfields folks; rules say you can't sell a building with that unless you clean it up accordance to regs; however, can just get the cleanup plan reviewed and approved; doesn't matter if it's a past or future owner either; however does not include leased properties

Keyes: is this guidance in writing?

Martig: unsure if draft guidance exists

Next Steps

Study Group discussed what EPA needs from them regarding this initiative

Dufficy: Is this handout our world? And what specific examples exist out there? What in the way we do business drives you nuts? We need to hear from Wisconsin

Stieglitz: we work together very well as a Study Group; I think this is an issue we need to add to our agenda as a subgroup, or a full group or both; we have a list now and we need to flesh those out

Stieglitz: My question is what are we going to issue; who's going to read it; i.e. what's going to happen and how are we going to hear back from the EPA officials?

Dufficy: we have a mechanism to get this done and get back to you

Mueller: you should not have a problem hearing specific examples; but with our Study Group we do follow up and we do want accountability; we also would like to hear about new things EPA is doing and how it relates to us and how it can help us

Ken: we have the MOA, why do we need to get EPA to do this – why can't we go to just the states? The MOA should make that happen – it shouldn't just apply to Superfund, it should be for all cleanups, PCBs, lead, etc.

Other Issues

Keyes: In regards to the NCP, the IRS s.198 tax treatment only applies if its hazardous waste to qualify for that; there are other funding programs that exclude petroleum sites; there's language about consistency for NCP and it's hard to tell when that all applies

Dufficy: the NCP should fall by the wayside once new BF legislation comes on-line

Foss: another issue is how to get rid of federal liens? Good example – the Tri Chem property in Milwaukee; has \$500,000 in several different liens; now we have this windfall lien issue, etc.; who do we turn to?

Vander Kloot: are there other people that need to be brought in outside the group to tell stories?

Darsi: we have a fairly substantial list that we can seek input from

NEXT MEETING: Andrew Savagian will send out an email about the next meeting dates and sign ups for subgroups; Study Group members expressed an interest in meeting in Milwaukee next time; Bruce Keyes volunteered the Foley & Lardner offices and Nancy Frank volunteered to look for a place at UW-Milwaukee

Keyes: EPA's is a separate, dynamic process, they need to share with us drafts, etc. so we get a chance to respond

Dufficy, VanderKloot: we are committed to doing that

EPA/DNR AGREES TO:

- set up ground rules, deadlines, etc.
- EPA needs to meet with those who are not here (phone or in person), get their opinions, then meet together with the group to flesh everything out

Adjourn